

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5484 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI H PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Ms MANISHA LAVKUMAR, AGP for Respondent Nos. 1 & 2

MR JV BHAIKAVIA for Respondent Nos. 3 to 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/07/1999

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of Constitution, the petitioner has challenged the judgment and order dt. 23rd July, 1985 passed by the Secretary, (Appeals) Revenue Department, Gujarat State, dismissing the petitioner's revision application and confirming the order dt. 2nd March, 1982 of the Collector, Mahesana, taking back the land in question (admeasuring 35 Gs situated in village Ajod of Vijapur Taluka in Mahesana

District).

2. It appears that the land in question was a Service Inam. The land was mutated in the names of Senava Bhikha Kala in Chakariyat register. Upon his death, the names of Senava Shankar Kala, Senva Babu Bhikha and Soma Bhikha were entered into village form 7-12 and name of Soma Bogha was shown as occupant and the name of Senva Gonda was shown as protected tenant in column of other rights for the period from 1954-55 to 1959-60 which entry was cancelled by mutation entry No. 1633. Subsequently the Merged Territories Miscellaneous Alienation Abolition Act, 1955 came into force and hence the land in question vested in the Government and Senva Bhikha Kala was shown as direct descendant of the occupant and had he applied for the land and paid the requisite amount to the Government, he could have been granted the land as per the provisions of the said Act. However Senva Bhikha Kala did not make payment of any such amount to the authorities, but executed an unregistered mortgage deed in favour of the petitioner on 8/1/1970 for a sum of Rs.22,301/- in respect of the land in question. Thereafter, by a registered sale deed dt. 24/5/1977, Senva Bhikha Kala sold the said land to the petitioner for a sum of Rs.7,614/-. However, no permission of the Collector was obtained for any such transaction. In view of the above, the Collector passed the impugned order dt. 2/3/1982 (Annexure : A) stating that the land had vested in the Government and the same was not be granted to any one, hence possession of the land in question with the petitioner herein cannot be considered as legal and the possession was required to be taken back. Aggrieved by the aforesaid order, the petitioner approached the Secretary, (Appeals), Revenue Department, in revision under Sec.211 of the Bombay Land Revenue Code. After considering the material on record and after hearing the parties, the Secretary has dismissed the revision application mentioning that as stated in the record, Senva Bhikha Kala was not cultivating the land in question but he had transferred the possession of the land to an other for cultivation and the Mamlatdar in his report dt. 31-8-1979 had also stated that the Vatandar or his heirs were not residing in the village nor had they paid any amount under the provisions of the Act.

3. At the hearing of this petition, Mr PV Hathi, learned counsel for the petitioner has submitted that the petitioner is in possession of the land since last more than 20 years and that the petitioner is prepared to purchase the land in accordance with the Government

Resolution dated 16.3.1982 referred to in para 4 of the order dated 23.7.1985 of the Secretary, Revenue Department (Appeals). Mr Hathi further submitted that it is true that no prior permission of the Collector was taken, but it is open to the Court to remand such matter to the Collector for enabling the parties to get ex-post facto permission. In support of the said contention, the learned counsel relied on the decision of this Court in the case of Patel Maganbhai Kesurbhai since decd. through his heirs vs. Bhogilal Punjabhai Vasava & Ors., 1998(2) GLR 961.

4. On the other hand, the learned AGP for respondent Nos. 1 and 2 and Mr Bhairavia, learned counsel for respondent Nos. 3 to 5 have supported the impugned orders and have submitted that no interference with the said orders is called for in exercise of the jurisdiction under Article 226 of the Constitution.

5. From a perusal of the impugned order dated 23.7.1985 of the Secretary it does appear that the original watandar did not pay the amount as contemplated by the provisions of the Bombay Merged Territories Miscellaneous Alienation Act, 1955 and, therefore, the land was not regranted to the original watandar or to respondent Nos. 3 to 5 who claim to be the heirs of the deceased watandar, but the present petitioner claims that the possession of the land was physically transferred by Senva Bhikha Kala to the petitioner initially by a mortgage deed and thereafter by a registered sale deed dated 24.5.1977. The petitioner had also submitted an application dated 5.6.1982 (Annexure "B" to the petition) requesting the Collector to charge whatever amount or penalty was leviable and to regularize the petitioner's possession of the land in question. In this view of the matter and also in view of the decision of this Court in Patel Maganbhai Kesurbhai (Supra) holding that even if the legislation requires previous sanction of the Collector before the transaction, such transfer is not totally prohibited, but a transaction without previous sanction of the Collector can be subsequently regularised if the parties apply to the Collector for ex-post facto permission. That decision was, of course, in the context of the provisions of Section 73AA of the Bombay Land Revenue Code, 1879, but the principle underlying the said provisions would be applicable to any other similar legislation such as the enactment governing the land which is the subject matter of the present petition.

6. In view of the above, this petition is disposed of with a direction to the Collector, Mehsana, respondent

No. 2 herein, to hear and decide the petitioner's application dated 5.6.1982 (Annexure "B" to the petition) and any other or further representation or application which the petitioner may make to the Collector within one month from today and to decide the same after hearing all the affected parties. The application/representation shall be decided within six months from today without being inhibited by the order dated 2.3.1982 of the Collector, Mehsana and order dated 23.7.1985 of the Secretary (Appeals), Revenue Department, Government of Gujarat.

7. The petition is disposed of subject to the aforesaid direction.

Date: 21/7/1999. (M.S. SHAH, J.)
(ccshah)